

## **EXHIBIT 3**

FEB-28-2012 05:29 From: 4087411671

Page: 4/22

SUM-100

# SUMMONS (CITACION JUDICIAL)

**NOTICE TO DEFENDANT:****(AVISO AL DEMANDADO):**TREPPEL MCGRANE GREENFIELD, LLP; ANTHONY TREPPEL;  
WILLIAM MCGRANE; and DOES 1 through 100, inclusive**YOU ARE BEING SUED BY PLAINTIFF:****(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

ANTHONY G. THOMAS

FOR COURT USE ONLY  
(SÓLO PARA USO DE LA CORTE)ENDORSED  
FILED

2012 FEB 28 P 3:17

David H. Yamasaki, Clerk of the Superior Court  
County of Santa Clara, CaliforniaBy: Sharon Cullen  
Deputy Clerk

NOTICE: You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), or by contacting your local court or county bar association. NOTE: The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **(AVISO: Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.)**

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presente su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), en el Centro de Ayuda de las Cortes de California, ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO: Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.**

The name and address of the court is:

**(El nombre y dirección de la corte es):**SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CLARA  
191 North First Street, San Jose, CA 95113

Unlimited Civil Division

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

**(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):**

Michael T. Morrissey (#062195), P.O. Box 2549, Cupertino, CA 95015-2549

Fax No.: (408) 741-1671

Robert A. Machado (#088836), 1110 N. First St., San Jose, CA 95112

Phone No.: (408) 872-1850

DATE: FEB 28 2012

DAVID H. YAMASAKI

Clerk, by

(Fecha)

Chief Executive Officer, Clerk (Secretario)

Sharon Cullen

Deputy  
(Adjunto)**(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)****(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).**

(SEAL)

**NOTICE TO THE PERSON SERVED: You are served**

1. ☒ as an individual defendant.  
2. ☐ as the person sued under the fictitious name of (specify):

- 3.
- ☐
- on behalf of (specify):

under: ☐ CCP 416.10 (corporation)☐ CCP 416.20 (defunct corporation)☐ CCP 416.40 (association or partnership)☐ other (specify):

- 4.
- ☐
- by personal delivery on (date):

☐ CCP 416.60 (minor)☐ CCP 416.70 (conservatee)☐ CCP 416.90 (authorized person)

Page 1 of 1

FEB-28-2012 05:29

From: 4087411671

Page: 5/22

ENDORSED  
FILED

2012 FEB 28 P 3: 16

David H. Yarnall, Clerk of the Superior Court  
County of Santa Clara, CaliforniaBy: \_\_\_\_\_  
Deputy Clerk

Sharon Cullen

MICHAEL T. MORRISSEY, CSBN: 062195  
LAW OFFICES OF MICHAEL T. MORRISSEY  
P.O. Box 2549  
Cupertino, CA 95015-2549  
(408) 872-1850  
(408) 741-1671 - Facsimile

ROBERT A. MACHADO, CSBN: 088836  
MACHADO & MACHADO  
1110 North First Street  
San Jose, CA 95112  
(408) 280-7011  
(408) 280-7313 - Facsimile

Attorneys for Plaintiff ANTHONY G. THOMAS

SUPERIOR COURT FOR THE STATE OF CALIFORNIA  
IN AND FOR THE COUNTY OF SANTA CLARA

ANTHONY G. THOMAS,

Plaintiff,

vs.

TREPTEL McGRANE GREENFIELD LLP;  
ANTHONY TREPTEL, an individual;  
WILLIAM McGRANE, an individual; and  
DOES 1 through 100, inclusive,

Defendants.

Case No. 12 CV 219586  
COMPLAINT FOR DAMAGES: BREACH  
OF CONTRACT; BREACH OF  
FIDUCIARY DUTY; FRAUD

BY FILE

COMES NOW the Plaintiff, ANTHONY G. THOMAS, to allege as follows:

1. Plaintiff ANTHONY G. THOMAS (aka Tony Thomas) is, and at all times herein mentioned was, a resident of Santa Clara County, California.

2. Plaintiff is informed and believes and based thereon alleges that Defendant TREPTEL McGRANE GREENFIELD LLP (hereinafter "TMG") is a business organization with its principle place of business in Santa Clara County, California.



1           3.     Plaintiff is informed and believes and based on such information and belief  
2 alleges that defendant WILLIAM McGRANE (hereinafter "McGRANE") is a resident of San  
3 Francisco County, California.  
4

5           4.     Plaintiff is informed and believes and based on such information and belief  
6 alleges that defendant ANTHONY TREPEL (hereinafter "TREPEL") is a resident of Santa Clara  
7 County, California.  
8

9           5.     Plaintiff is ignorant of the true names and capacities of the defendants sued herein  
10 as DOES 1 through 100 and therefore sues said defendants by such fictitious names. Plaintiff is  
11 informed and believes and based thereon alleges that each of the fictitiously named defendants is  
12 responsible for the actions and damages complained of herein and that they are respectively the  
13 agents, principles, servants, masters, partners, co-conspirators and or joint venturers of and with  
14 their co-defendants.  
15

16                               **FIRST CAUSE OF ACTION**  
17                               **(BREACH OF CONTRACT – Defendant TMG only)**

18           6.     Plaintiff re-alleges and incorporates by reference each of the preceding paragraphs  
19 of this complaint as though fully set forth herein.  
20

21           7.     On or about August 26, 2010, the Plaintiff engaged the services of defendant  
22 TMG pursuant to a written agreement entitled Master Agreement for Year 2010 Legal Services,  
23 a true and correct copy of which is attached hereto designated Exhibit "A" and by this reference  
24 made a part hereof.

25           8.     One of the terms of the written contract was unclear and not in conformance with  
26 the actual agreement entered into between the parties so the letter enclosing the contract was  
27 modified to provide that the fee of One Hundred Fifty Thousand Dollars (\$150,000.00)  
28 mentioned in the contract was agreed to be the entire fee that TMG would earn in the matter.

1           9.     Thereafter, TMG did virtually no work in pursuit of the Plaintiff's case and in  
2 February 2011 breached the contract by falsely billing against it, taking excessive monies out of  
3 its trust account and later by demanding more fees. The breach of this contract constituted a  
4 breach of the original contract, as well as the contract as modified.  
5

6           10.    As a result of the breach of the original contract and the contract as modified, the  
7 Plaintiff has been damaged in the amount of the payments made to Defendant TMG in the  
8 amount of One Hundred Fifty Thousand Dollars (\$150,000.00).  
9

10          11.    The contract provides that if any action is required to enforce the terms of the  
11 contract the prevailing party shall be entitled to their reasonable attorney fees.

12               WHEREFORE, Plaintiff prays for judgment against defendant as set forth below.

13                               **SECOND CAUSE OF ACTION**  
14                               **(BREACH OF FIDUCIARY DUTY –All Defendants)**

15          12.    Plaintiff re-alleges and incorporates by reference each of the preceding paragraphs  
16 of this complaint as though fully set forth herein.  
17

18          13.    At all times herein mentioned the individual defendants, TREPEL and  
19 McGRANE owed the Plaintiff a fiduciary duty which prevented them from dealing unfairly with  
20 the Plaintiff and required them to render true and accurate time records.

21          14.    The defendants breached this duty by falsely claiming fees for time not worked,  
22 inflating fees and ultimately abandoning the Plaintiff by moving to withdraw forcing the Plaintiff  
23 to hire a new lawyer thereby wasting all time legitimately spent on his file.  
24

25          15.    As a result of the breach of fiduciary duty the Plaintiff has been damaged in an  
26 amount as yet unascertained but in excess of One Hundred Fifty Thousand Dollars  
27 (\$150,000.00).  
28

1           16. The conduct of all of the Defendants was malicious, oppressive and fraudulent  
2 entitling the Plaintiff to punitive damages according to proof.

3           WHEREFORE, Plaintiff prays for judgment against defendant as set forth below.  
4

5                                   **THIRD CAUSE OF ACTION**  
6                                   **(FRAUD – All Defendants)**

7           17. Plaintiff re-alleges and incorporates by reference each of the preceding paragraphs  
8 of this complaint as though fully set forth herein.

9           18. At the time the Plaintiff and Defendant entered into the contract for legal services  
10 Defendant TREPEL represented to Plaintiff that he would not be billed more than One Hundred  
11 Fifty Thousand Dollars (\$150,000.00) for the Defendants' services related to the litigation  
12 entitled Kenmark Ventures v. Thomas, et al. TREPEL further represented that One Hundred  
13 Fifty Thousand Dollars (\$150,000.00) would be the maximum fee charged by Defendant TMG.  
14

15           19. At the time of making the representation it was false and the true facts were that  
16 the Defendants had intended to charge the Plaintiff much more than One Hundred Fifty  
17 Thousand Dollars (\$150,000.00).  
18

19           20. The Plaintiff reasonably and justifiably relied on the representation of TREPEL  
20 and entered into the Master Agreement for Year 2010 Legal Services (Ex. "A") contract based  
21 on his representations.  
22

23           21. Had Plaintiff known the true facts he would not have contracted with Defendant  
24 TMG. As a result of the fraudulent misrepresentations the Plaintiff has been damaged generally  
25 and specifically in an amount as yet unascertained but in excess of One Hundred Fifty Thousand  
26 Dollars (\$150,000.00).  
27


28           22. The conduct of all of the Defendants was malicious, oppressive and fraudulent  
entitling the Plaintiff to punitive damages according to proof.

WHEREFORE Plaintiff prays judgment as follows:

1. For special damages according to proof and as alleged in the body of the complaint;
2. For general damages according to proof and as alleged in the body of the complaint;
3. For interest on said sums;
4. For reasonable attorney fees;
5. For costs of suit herein incurred; and
6. For such other and further relief as the court deems proper.

DATED: February 20, 2012

Respectfully submitted,

  
MICHAEL T. MORRISSEY  
Attorney for Plaintiff ANTHONY G. THOMAS

# EXHIBIT “A”



**MASTER AGREEMENT FOR YEAR 2010 LEGAL SERVICES**

This "MASTER AGREEMENT FOR YEAR 2010 LEGAL SERVICES" ("Agreement") is made at San Francisco, California, between TREPEL McGRANE GREENFIELD LLP, a California limited liability partnership ("Attorneys"), and TONY THOMAS ("Client").

1. ARBITRATION. THIS AGREEMENT INCLUDES AN ARBITRATION PROVISION BY WHICH CLIENT AGREES TO BINDING ARBITRATION AS TO ANY DISPUTE CONCERNING ATTORNEY FEES OR COSTS, OR CONCERNING ANY DISPUTE ARISING UNDER THIS AGREEMENT FOR BREACH OF CONTRACT, PROFESSIONAL NEGLIGENCE, OR BREACH OF FIDUCIARY DUTY. SEE PARAGRAPH 12 BELOW.

2. Scope of Services. Client retains Attorneys to perform legal services for Client in connection with all matter(s) for which legal bills are rendered or legal services are performed during the year 2010 (and thereafter until this Agreement has been terminated in writing) where such bill refers to "MFA2010-72." Attorneys will provide those legal services reasonably required to represent Client's interest in each such matter(s).

3. Responsibilities of Attorneys and Client. Attorneys will perform legal services for Client in the matter(s) identified above, keep Client informed of progress and developments, and respond promptly to Client's inquiries and communications. Client will fully cooperate with Attorneys in Attorneys' providing of legal services to Client

1 EXHIBIT "A"

hereunder (including keeping Attorneys reasonably informed of developments and complying with all reasonable requests of Attorneys in connection with the subject matter(s) of the representation), not seek to require Attorneys to commit any unlawful act or other action in violation of Attorneys' professional ethics, and timely make any and all payments required by this Agreement.

4. **Legal Fees and Billing Practices.** Client shall pay Attorneys by the hour for legal services rendered at Attorneys' prevailing rates in force at the time. A schedule of current prevailing rates is set forth on Exhibit A to this Agreement. The rates are subject to periodic adjustment after notice to Client, and Client agrees to pay such adjusted rates. The fees charged by Attorneys will be based on the time spent by attorneys, paralegals and other legal personnel such as law clerks.

5. **Staffing and Association of Attorneys.** Attorneys may assign attorney and non-attorney personnel as Attorneys deem appropriate to provide representation to Client. Attorneys may also associate other lawyers not employed by Attorneys to provide legal services to Client in connection with the matter(s) covered by this Agreement, with the advance consent of Client.

6. **Costs and Other Charges, Including Experts and Investigators.**

a. **In General.** Attorneys may incur various costs and expenses in performing legal services under this Agreement. Client agrees to pay for those costs and expenses in addition to paying professional fees at the hourly rates set forth on Exhibit A to this Agreement. These costs and expenses commonly include process servers' fees, fees fixed by law or assessed by courts and other agencies, court reporter fees, long

distance telephone calls, word processing fees, messenger and other delivery fees, postage, parking and other local travel expenses, photocopying (including in-house photocopying) and other reproduction costs, facsimile transmission, charges for computer research, and other similar items. Current rates for certain of these costs are set forth on Exhibit B to this Agreement. These rates are subject to periodic adjustment after notice to Client. Attorneys may, but are not required to, advance money for such costs if a third-party invoice cannot reasonably be forwarded to Client for payment, and any such disbursements will be included in Client's billing statements. Attorneys may also forward to Client bills from third parties, and Client agrees promptly to pay those bills directly. If Attorneys are required to travel on Client's behalf or arrange for other matter(s) requiring sizable disbursements, Attorneys may ask Client to advance such disbursements, and Client agrees to do so promptly.

b. **Out-of-Town Travel.** Client agrees to pay transportation, meals, lodging and all other costs of any necessary out-of-town travel by Attorneys' personnel.

c. **Experts, Consultants and Investigators.** To aid in representing Client, it may be necessary to engage expert witnesses, consultants or investigators. Attorneys will select any expert witnesses, consultants or investigators to be hired, in consultation with Client. Client agrees to pay the fees and charges of such persons; although such persons may direct their bills to Attorneys for convenience or as a means of establishing and preserving the attorney work product doctrine or other applicable privilege.

7. **Advance Fees.** Client hereby agrees to deposit an advance for fees and costs with Attorneys in the amount of \$150,000 upon execution of the Agreement. The advance shall be deposited in the Attorneys' client trust account and will be subject to the provisions of California Business & Professions Code section 6210; any interest earned thereon shall be paid to the State Bar of California in accordance with section 6210. Client grants Attorneys a lien in the funds deposited in trust to secure all amounts due from Client to Attorneys. As of the date of mailing of a billing statement to Client, Attorneys may withdraw the amount of funds reflected in the billing statement from the advance on deposit in the trust account. If Attorneys receive a written objection from Client within ten (10) days of mailing of the billing statement, Attorneys' right to such fees/costs is "disputed" and Attorneys will redeposit the disputed fee/costs in the client trust account until the dispute is resolved. If an objection is received by Attorneys from Client outside the ten-(10) day objection period, Attorney has no obligation to redeposit the disputed fees into the client trust account. Client shall replenish the funds held in Attorneys' client trust account as requested by Attorneys.

8. **Billing Statements.** Attorneys will send Client monthly statements for fees (based on hourly rates in accordance with Paragraph 4 of this Agreement) and costs incurred. Each such bill will be due upon receipt. A bill outstanding for more than thirty (30) days will be subject to a charge, at the maximum legal rate (currently 10% per annum), to offset Attorneys' costs in carrying the overdue account.

9. **Lien.** Client hereby grants to Attorneys a lien on any and all claims or causes of action that are the subject of Attorneys' representation under this Agreement.



Attorneys' lien will be for any sums owing to Attorneys at the conclusion of Attorneys' services. The lien will attach to any recovery which Client may obtain (whether by settlement, arbitration award, or court judgment) or funds held by Attorneys in trust or otherwise for the benefit of Client.

10. **Discharge and Withdrawal.** Client may discharge Attorneys at any time by written notice to Attorneys, effective upon receipt by Attorneys. Attorneys may likewise terminate this representation at any time for any reason, subject to Attorneys' obligation to provide reasonable transition assistance to new counsel of Client's choice and subject to any requirement that Attorneys obtain court permission for withdrawal.

When Attorneys' services to Client are concluded (upon receipt of notice of discharge or withdrawal), Attorneys will provide no further services and advance no further costs on Client's behalf, except as may be expressly agreed to in a writing signed by Attorneys and Client. If Attorneys are Client's attorneys of record in any proceeding, Client will execute and return a substitution-of-attorney form immediately on its receipt from Attorneys. Notwithstanding such discharge or withdrawal, Client will remain obligated to pay Attorneys at the agreed rates for services provided and to reimburse Attorneys for all costs advanced prior to the discharge or withdrawal. After Attorneys' services are concluded, Attorneys will, at Client's request and expense and as required by California Rule of Professional Conduct 3-700(D)(1), deliver Client's original file(s) to Client, along with any of Client's funds or property in Attorneys' possession. In the event Client requests the return of Client's original file(s), Attorney shall have the right to make and retain a copy of Client's file(s) and Client shall be responsible for all costs of

copying same. In the event of termination of this Agreement pursuant to this paragraph, Attorneys shall continue to have a lien on any recovery or funds held for the benefit of Client as set forth in Paragraph 9 of this Agreement.

11. **Destruction of Client Files:** Following discharge, withdrawal or final conclusion of the matter(s) for which Attorneys services were engaged, Attorneys shall maintain their original file in storage for a minimum of five years. At the end of the five-year period, Attorneys shall notify Client in writing at the last known address for Client of its intent to destroy the original files. Client shall have two weeks from such notification to inform Attorneys in writing of Client's intent to take custody of the original files instead of allowing destruction. Client shall then have 30 days in which to take custody of the client matter(s) files. If Client fails to notify Attorneys of its intent to take custody of the original files or fails to take physical custody of the files in the time allotted, Attorneys shall destroy the client matter(s) files.

12. **ARBITRATION.** ANY CONTROVERSY, DISPUTE, OR CLAIM OF WHATEVER NATURE ARISING OUT OF, IN CONNECTION WITH, OR IN RELATION TO THE ATTORNEY-CLIENT RELATIONSHIP BETWEEN ATTORNEY AND CLIENT INCLUDING ANY CLAIM BASED ON BREACH OF CONTRACT, PROFESSIONAL NEGLIGENCE, TORT, BREACH OF FIDUCIARY DUTY, OR STATUTE, SHALL BE RESOLVED, AT THE REQUEST OF EITHER ATTORNEY OR CLIENT OR BOTH, BY FINAL AND BINDING ARBITRATION CONDUCTED IN SAN FRANCISCO, CALIFORNIA, AND ADMINISTERED BY THE AMERICAN ARBITRATION ASSOCIATION

(AAA) IN ACCORDANCE WITH ITS COMMERCIAL ARBITRATION RULES BOTH AS TO MATTERS OF SUBSTANCE AND PROCEDURE, AND JUDGMENT UPON ANY AWARD RENDERED BY THE ARBITRATOR(S) MAY BE ENTERED BY ANY STATE OR FEDERAL COURT HAVING JURISDICTION THEREOF. NOTHING CONTAINED HEREIN, HOWEVER, IS INTENDED TO LIMIT OR IN ANY MANNER WAIVE CLIENT'S RIGHT TO REQUIRE NON-BINDING ARBITRATION (OR REQUEST BINDING ARBITRATION) PURSUANT TO THE MANDATORY FEE ARBITRATION ACT (MFAA), SECTION 6200 ET SEQ. OF THE CALIFORNIA BUSINESS AND PROFESSIONS CODE, BUT INSTEAD ONLY REQUIRES BINDING AAA ARBITRATION AND ITS CONSEQUENT WAIVER OF ANY RIGHT TO A JURY TRIAL CLIENT MAY OTHERWISE HAVE IN A COURT OF LAW AS, WHEN, AND IF THE CLIENT HAS EXHAUSTED HIS, HER, OR ITS REMEDIES UNDER THE MFAA. THE PARTIES HEREBY EXPRESSLY WAIVE ANY RIGHT TO AVOID THIS PRIVATE BINDING ARBITRATION PROVISION FOLLOWING NON-BINDING FEE ARBITRATION CONDUCTED UNDER THE MFAA.

13. Disputes. In the event of any dispute, either party may commence a proceeding and effect service on the other party by certified mail, postage prepaid, rather than personal service. Such service shall be made upon Attorneys at One Ferry Building, Suite 220, San Francisco, CA 94111. Client shall be served at the following address:

16255 Denali Drive

Morgan Hill, CA 95057

Attorneys or Client may change the address for service by written notice to the other party, served by first-class mail, postage prepaid.

14. **Prevailing Party Attorneys' Fees Under California Code of Civil Procedure §1021 and Civil Code §1717.** In accordance with California Code of Civil Procedure section 1021 and Civil Code section 1717, Attorneys and Client by this Agreement are providing specifically that in the event of any dispute, claim, arbitration or other proceeding between us arising out of this Agreement or the fees incurred for legal services, the successful or prevailing party will be entitled to reasonable attorneys' fees and costs, in addition to any other relief granted. Client acknowledges that this provision entitling the prevailing party to reasonable attorneys' fees includes all tort or contract claims between us arising out of the Agreement or the legal services provided by Attorneys or Client including, but not limited to, claims for legal malpractice.

15. **Effective Date.** This Agreement will take effect upon its full execution by both Attorneys and Client, but its effective date will be retroactive to the date Attorneys commenced providing legal services to Client.

16. **Independent Advice of Counsel.** Client has been advised that aspects of this Agreement may provide Attorneys with rights adverse to those of Client, including, but not limited to, Attorneys' lien against any recovery Client may obtain in the matter(s) in which Attorneys provide services. Client has been advised to seek the advice of independent counsel as to the propriety of entering into this Agreement and has obtained



such advice from Joseph R. Kafka, Esq. (SBN 139510) who has read and approved this Agreement.

17. Miscellaneous.

a. Conditions Precedent and Counterparts. This Agreement may be executed in counterparts and/or by use of facsimile signatures and all documents so executed shall constitute one and the same Agreement, and each shall be deemed an original.

b. Headings. The headings to the paragraphs of this Agreement are solely for the convenience and reference of the parties hereto, are not a part of this Agreement, and shall thus be disregarded in the interpretation, construction, or determination of the validity of this Agreement or any provision hereof.

c. Entire Agreement; Severability. This Agreement contains the entire agreement of the parties. No other agreement, statement or promise made on or before the effective date of this Agreement will be binding on the parties. If any provision of this Agreement is held, in whole or in part, to be unenforceable for any reason, the remainder of that provision and of the entire agreement will be severable and remain in effect.

d. Effective Date. This agreement shall be effective as of the date Attorneys first performed services for Client covered by this Agreement.


e. Choice of Law. This agreement shall be governed in all respects by California law.

NOTICE: BY SIGNING THIS AGREEMENT YOU ARE AGREEING TO HAVE ANY DISPUTE BETWEEN CLIENT AND ATTORNEYS, INCLUDING ANY ISSUE OF LEGAL MALPRACTICE, DECIDED BY ARBITRATION. YOU ARE GIVING UP YOUR RIGHT TO A JURY OR COURT TRIAL. SEE PARAGRAPH 1 OF THIS AGREEMENT.

"Attorneys"


DATED: August 26, 2010

TREPEL McGRANE GREENFIELD LLP

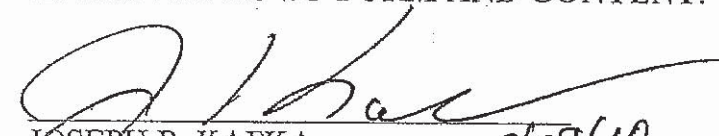
By:   
ANTHONY J. TREPEL

DATED: August 26, 2010

" Client "

  
TONY THOMAS

APPROVED AS TO FORM AND CONTENT:

  
JOSEPH R. KAFKA  
Attorney for TONY THOMAS 8/27/10

## EXHIBIT A

## EMPLOYEES' HOURLY RATES

ANTHONY J. TREPEL .....	\$800.00
WILLIAM McGRANE.....	\$800.00
BERNARD S. GREENFIELD .....	\$575.00
BRIAN HANNON.....	\$500.00
MAUREEN A. HARRINGTON .....	\$500.00
MARCIA E. GERSTON.....	\$500.00
CHRISTOPHER SULLIVAN .....	\$500.00
TYLER G. DRAA .....	\$500.00
SANDRA R. McINTOSH .....	\$500.00
STEPHANIE SOUTHWICK.....	\$400.00
JUSTIN DRAA .....	\$300.00
GAVIN McGRANE .....	\$300.00
ANAND PATEL.....	\$300.00
EDWARD COLBERT.....	\$250.00
WILLIAM WALRAVEN.....	\$250.00
LAW CLERKS .....	\$125.00
PARALEGALS .....	\$125.00
CASE CLERKS .....	\$100.00

**EXHIBIT B**

**SCHEDULE OF CHARGES**

In-Office Photocopying per page.....	\$ .20
Facsimile Transmission/Scan per page.....	\$ .20
Mileage Per Mile .....	\$ .55
Online Legal Research.....	\$10.00/minute



ATTACHMENT CV-5012

**CIVIL LAWSUIT NOTICE**

Superior Court of California, County of Santa Clara  
191 N. First St., San Jose, CA 95113

112 CV 219586

CASE NUMBER: \_\_\_\_\_

**PLEASE READ THIS ENTIRE FORM**

**PLAINTIFF** (the person suing): Within 60 days after filing the lawsuit, you must serve each Defendant with the *Complaint*, *Summons*, an *Alternative Dispute Resolution (ADR) Information Sheet*, and a copy of this *Civil Lawsuit Notice*, and you must file written proof of such service.

**DEFENDANT** (The person sued): You must do each of the following to protect your rights:

1. You must file a written response to the *Complaint*, using the proper legal form or format, in the Clerk's Office of the Court, within 30 days of the date you were served with the *Summons* and *Complaint*;
2. You must serve by mail a copy of your written response on the Plaintiff's attorney or on the Plaintiff if Plaintiff has no attorney (to "serve by mail" means to have an adult other than yourself mail a copy); and
3. You must attend the first Case Management Conference.

Warning: If you, as the Defendant, do not follow these instructions,  
you may automatically lose this case.

**RULES AND FORMS:** You must follow the California Rules of Court and the Superior Court of California, County of Santa Clara Local Civil Rules and use proper forms. You can obtain legal information, view the rules and receive forms, free of charge, from the Self-Help Center at 99 Notre Dame Avenue, San Jose (408-882-2900 x-2926), [www.sccselfservice.org](http://www.sccselfservice.org) (Select "Civil") or from:

- State Rules and Judicial Council Forms: [www.courtinfo.ca.gov/forms](http://www.courtinfo.ca.gov/forms) and [www.courtinfo.ca.gov/rules](http://www.courtinfo.ca.gov/rules)
- Local Rules and Forms: <http://www.sccsuperiorcourt.org/civil/rule1toc.htm>

**CASE MANAGEMENT CONFERENCE (CMC):** You must meet with the other parties and discuss the case, in person or by telephone, at least 30 calendar days before the CMC. You must also fill out, file and serve a *Case Management Statement* (Judicial Council form CM-110) at least 15 calendar days before the CMC.

*You or your attorney must appear at the CMC. You may ask to appear by telephone – see Local Civil Rule 8.*

Your Case Management Judge is: Honorable Mark Pierce Department: 9

The 1<sup>st</sup> CMC is scheduled for: (Completed by Clerk of Court)

Date: JUL 10 2012 Time: 1:30 pm in Department: 9

The next CMC is scheduled for: (Completed by party if the 1<sup>st</sup> CMC was continued or has passed)

Date: \_\_\_\_\_ Time: \_\_\_\_\_ in Department: \_\_\_\_\_

**ALTERNATIVE DISPUTE RESOLUTION (ADR):** If all parties have appeared and filed a completed *ADR Stipulation Form* (local form CV-5008) at least 15 days before the CMC, the Court will cancel the CMC and mail notice of an ADR Status Conference. Visit the Court's website at [www.sccsuperiorcourt.org/civil/ADR/](http://www.sccsuperiorcourt.org/civil/ADR/) or call the ADR Administrator (408-882-2100 x-2530) for a list of ADR providers and their qualifications, services, and fees.

**WARNING:** Sanctions may be imposed if you do not follow the California Rules of Court or the Local Rules of Court.

---

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CLARA**  
**ALTERNATIVE DISPUTE RESOLUTION**  
**INFORMATION SHEET / CIVIL DIVISION**

---

Many cases can be resolved to the satisfaction of all parties without the necessity of traditional litigation, which can be expensive, time consuming, and stressful. The Court finds that it is in the best interests of the parties that they participate in alternatives to traditional litigation, including arbitration, mediation, neutral evaluation, special masters and referees, and settlement conferences. Therefore, all matters shall be referred to an appropriate form of Alternative Dispute Resolution (ADR) before they are set for trial, unless there is good cause to dispense with the ADR requirement.

*What is ADR?*

ADR is the general term for a wide variety of dispute resolution processes that are alternatives to litigation. Types of ADR processes include mediation, arbitration, neutral evaluation, special masters and referees, and settlement conferences, among others forms.

*What are the advantages of choosing ADR instead of litigation?*

ADR can have a number of advantages over litigation:

- < ADR can save time. A dispute can be resolved in a matter of months, or even weeks, while litigation can take years.
- < ADR can save money. Attorney's fees, court costs, and expert fees can be reduced or avoided altogether.
- < ADR provides more participation. Parties have more opportunities with ADR to express their interests and concerns, instead of focusing exclusively on legal rights.
- < ADR provides more control and flexibility. Parties can choose the ADR process that is most likely to bring a satisfactory resolution to their dispute.
- < ADR can reduce stress. ADR encourages cooperation and communication, while discouraging the adversarial atmosphere of litigation. Surveys of parties who have participated in an ADR process have found much greater satisfaction than with parties who have gone through litigation.

*What are the main forms of ADR offered by the Court?*

- < Mediation is an informal, confidential, flexible and non-binding process in which the mediator helps the parties to understand the interests of everyone involved, and their practical and legal choices. The mediator helps the parties to communicate better, explore legal and practical settlement options, and reach an acceptable solution of the problem. The mediator does not decide the solution to the dispute; the parties do.
- < Mediation may be appropriate when:
  - < The parties want a non-adversary procedure
  - < The parties have a continuing business or personal relationship
  - < Communication problems are interfering with a resolution
  - < There is an emotional element involved
  - < The parties are interested in an injunction, consent decree, or other form of equitable relief
- < Neutral evaluation, sometimes called "Early Neutral Evaluation" or "ENE", is an informal process in which the evaluator, an experienced neutral lawyer, hears a compact presentation of both sides of the case, gives a non-binding assessment of the strengths and weaknesses on each side, and predicts the likely outcome. The evaluator can help parties to identify issues, prepare stipulations, and draft discovery plans. The parties may use the neutral's evaluation to discuss settlement.

Neutral evaluation may be appropriate when:

- < The parties are far apart in their view of the law or value of the case
- < The case involves a technical issue in which the evaluator has expertise
- < Case planning assistance would be helpful and would save legal fees and costs
- < The parties are interested in an injunction, consent decree, or other form of equitable relief

-over-



< Arbitration is a less formal process than a trial, with no jury. The arbitrator hears the evidence and arguments of the parties, then makes a written decision. The parties can agree to binding or non-binding arbitration. In binding arbitration, the arbitrator's decision is final and completely resolves the case, without the opportunity for appeal. In non-binding arbitration, the arbitrator's decision could resolve the case, without the opportunity for appeal, unless a party timely rejects the arbitrator's decision within 30 days and requests a trial. Private arbitrators are allowed to charge for their time.

Arbitration may be appropriate when:

- < The action is for personal injury, property damage, or breach of contract
- < Only monetary damages are sought
- < Witness testimony, under oath, needs to be evaluated
- < An advisory opinion is sought from an experienced litigator (if a non-binding arbitration)

< Civil Judge ADR allows parties to have a mediation or settlement conference with an experienced judge of the Superior Court. Mediation is an informal, confidential, flexible and non-binding process in which the judge helps the parties to understand the interests of everyone involved, and their practical and legal choices. A settlement conference is an informal process in which the judge meets with the parties or their attorneys, hears the facts of the dispute, helps identify issues to be resolved, and normally suggests a resolution that the parties may accept or use as a basis for further negotiations. The request for mediation or settlement conference may be made promptly by stipulation (agreement) upon the filing of the Civil complaint and the answer. There is no charge for this service.

Civil Judge ADR may be appropriate when:

- < The parties have complex facts to review
- < The case involves multiple parties and problems
- < The courthouse surroundings would be helpful to the settlement process

< Special masters and referees are neutral parties who may be appointed by the court to obtain information or to make specific fact findings that may lead to a resolution of a dispute.

Special masters and referees can be particularly effective in complex cases with a number of parties, like construction disputes.

< Settlement conferences are informal processes in which the neutral (a judge or an experienced attorney) meets with the parties or their attorneys, hears the facts of the dispute, helps identify issues to be resolved, and normally suggests a resolution that the parties may accept or use as a basis for further negotiations.

Settlement conferences can be effective when the authority or expertise of the judge or experienced attorney may help the parties reach a resolution.

*What kind of disputes can be resolved by ADR?*

Although some disputes must go to court, almost any dispute can be resolved through ADR. This includes disputes involving business matters; civil rights; collections; corporations; construction; consumer protection; contracts; copyrights; defamation; disabilities; discrimination; employment; environmental problems; fraud; harassment; health care; housing; insurance; intellectual property; labor; landlord/tenant; media; medical malpractice and other professional negligence; neighborhood problems; partnerships; patents; personal injury; probate; product liability; property damage; real estate; securities; sports; trade secret; and wrongful death, among other matters.

*Where can you get assistance with selecting an appropriate form of ADR and a neutral for your case, information about ADR procedures, or answers to other questions about ADR?*

Contact:  
Santa Clara County Superior Court  
ADR Administrator  
408-882-2530

Santa Clara County DRPA Coordinator  
408-792-2910

---

ALTERNATIVE DISPUTE RESOLUTION INFORMATION SHEET/ CIVIL DIVISION

04/05/2013 12:11 14082807313

MACHADO LAW OFFICES

PAGE 02/02

Copy  
**FILED**

APR 03 2013

DAVID H. YAMASAKI  
Chief Executive Officer/Clerk  
Superior Court CA County of Santa Clara  
By Mark H. Pierce DEPUTYSUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SANTA CLARAANTHONY THOMAS,  
PLAINTIFF,

VS.

TREPel McGRANE GREENFIELD, ET AL,  
DEFENDANTS.

CASE NO.: 1-12-CV-219586

ORDER ON MOTION TO SET ASIDE  
DISMISSAL

The Motion to Set Aside Dismissal by Plaintiff came on for hearing before the Honorable Mark H. Pierce on March 26, 2013 at 9:00 a.m. in Department 9. The court having considered the pleadings, argument of counsel and the matter having been submitted, the court orders as follows:

The Motion is GRANTED, on the condition that Plaintiff's attorney pay Sanctions in the amount of \$1000.00 to the Court within 10 days of this order.

Further Case Status Hearing RE: FTS is set for 5-16-13 at 10:02 a.m. in Department 9.

IT IS SO ORDERED.

Dated: APR 03 2013

Copy  
Mark H. Pierce  
HON MARK H. PIERCE  
JUDGE OF THE SUPERIOR COURT

1  
ORDER ON SUBMITTED MATTER 112CV219586



04/05/2013 12:11 14082807313

MACHADO LAW OFFICES

PAGE 01/02

TELEPHONE: (408) 280-7011

FACSIMILE: (408) 280-7313

E-MAIL: RAM730@AOL.COM

**LAW OFFICES OF  
MACHADO & MACHADO**

ROBERT A. MACHADO

MACHADO BUILDING

1110 NORTH FIRST STREET

SAN JOSE, CALIFORNIA 95112

**FAX COVER SHEET**TO: Johnathan MayanOF: SCERCFAX NUMBER: 1 714 550 1251FROM: Bob MachREGARDING: Thomas v TrepelDATE: 4-5-2013NUMBER OF PAGES INCLUDING COVER SHEET: 2COMMENTS: Copy of order**CONFIDENTIALITY NOTICE**

The information contained in this facsimile message is information protected by attorney-client and/or the attorney work product privilege. It is intended only for the use of the individual named above and the privileges are not waived by virtue of this having been sent via facsimile. If the person actually receiving this facsimile or any other reader of the facsimile is not the named recipient or employee or agent responsible to deliver it to the named recipient, any use, dissemination, distribution, or copying of the communication is strictly prohibited. If you have received this communication in error please immediately notify us by telephone and return the original message to us at the above address via U.S. Postal Service.

IF YOU HAVE ANY PROBLEM WITH THE RECEIPT OF THIS TRANSMISSION, PLEASE  
CALL (408) 280-7011 IMMEDIATELY.